IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3087 OF 2006

The President
Madha Taluka Shikshan Prasark
Mandal, Kurduwadi & anr. ..Petitioners

Vs.

Shri Yuvraj Suresh Raut
and ors. ..Respondents

Mr. S.A. Sawant for petitioners.
Mr. I.M. Khairdi for respondent no.1.
Mr. M.H. Solkar, AGP for respondent no.2.

CORAM: B.H. MARLAPALLE, J.

Date : August 29, 2006.

P.C.:

1. Heard Mr. Sawant, the learned counsel for the petitioners and Mr. Khairdi the learned counsel for the respondent no.1. Mr. Solkar, the learned AGP appears for respondent nos.2. The respondent no.3 is not a necessary party and hence shall be deleted forthwith.

2. Rule. Respondents waive service.

3. Petition is taken up for final hearing

forthwith as it impugns an interlocutory order dated 25/4/2006 passed by the School Tribunal at Solapur thereby allowing interim relief application at Exh.5 filed in Appeal No.160 of 2005.

4. The respondent no.1-teacher possesses the qualification of B.A. B.Ed. and was, therefore, appointed as an Assistant Teacher by the petitioner no.1 at its school by name Vinayakrao Patil Vidyalay in Solapur District and on probation for a period of two years. While he was working as an Assistant Teacher, on 11/1/2003 he was taken in custody by the police as an offence punishable under Section 307 of IPC was registered against him. He came to be released on 28/1/2003 on bail and the trial in the criminal case is still pending. He reported for duty on 31/1/2003 and while he continued in service, he was again arrested on 31/12/2003 in respect of yet another criminal case registered against him for the offence punishable under Section 302 read with Section 149 of IPC and he was tried for the said offence in Sessions Case No.58 of 2004. The learned Sessions Judge by his order dated 29/4/2005 was pleased to convict and

sentence the respondent no.1 for life imprisonment in Sessions Case No.58 of 2004. The said order of conviction and sentence has been challenged by the respondent no.1 in Criminal Appeal No.603 of 2005 which has been admitted and by suspending the order of sentence he has been released on bail by this court on 1/7/2006.

5. It appears that after he was released on bail by this court, he sought to report for duty and the petitioner no.2 did not allow him to report for duty. Consequently, he approached the School Tribunal and filed Appeal No.160 of 2005. By the impugned order, below Exh.5, the School Tribunal held, prima facie, that the otherwise termination dated 26/8/2005 was required to be stayed and this order is perverse and palpably erroneous for the following reasons.

6. Admittedly, the respondent no.1 was appointed as an Assistant Teacher on probation for a period of two years and in normal circumstances the said period of probation could have been completed on 14/6/2004. However, for the acts attributable to the respondent

no.1, he was arrested by the police on 11/1/2003 i.e. after about seven months from service he had as a probationer and after he was released on 28/1/2003, he reported for duty on 31/1/2003. In the second spell he completed service of about 11 months, by the time he was against arrested on 31/12/2003. Thus, as on 14/6/2004 he could not remain on duty and by then he had put in about one year and seven months of total service as an Assistant Teacher on probation. He could not attain the status of a confirmed or deemed confirmed Assistant Teacher and, therefore, Section 4(6) of the M.E.P.S. Act, 1977 read with Rule 33(5) of the M.E.P.S. Rules 1981 cannot be made applicable to the respondent no.1.

7. There is yet another facet to his case and the fact remains that an order of conviction under Section 302 read with Section 149 of IPC still stands against him and he is facing prosecution yet in another case for an offence punishable under Section 307 of IPC. As an Assistant Teacher in a secondary school, he cannot claim, as a matter of right, that he should be reinstated so as to allow him to complete the

remainder of the probationary period so as to enable him to seek the benefit of permanency by an interlocutory order. A secondary school cannot afford to have a teacher and that too on probation who has been convicted for an offence of murder and is facing a trial for another offence punishable under Section 307 of IPC. It will be detrimental not only to the interest of the private school but indeed to the students who are in the reformative and impressionable age and, therefore, the order of the School Tribunal impugned in this petition allowing the application at Exh.5 is unsustainable.

8. Hence, this petition succeeds and the same is hereby allowed. The impugned order dated 25/4/2006 passed by the Presiding Officer, School Tribunal, Solapur is hereby quashed and set aside and consequently, the application at Exh.5 filed in Appeal No.160 of 2005 stands rejected.

9. Rule made absolute accordingly with no order as to costs.

(B.H. Marlapalle,J.)